

Agreement”) for W-A to act as the general contractor for the construction of a natural gas cogeneration plant (“Southbridge Power Plant”). (See, EPC Agreement attached hereto as Exhibit 1). Southbridge denies the remaining allegations contained in paragraph 6 of the plaintiff’s complaint.

7. The defendant neither admits nor denies the allegations contained in paragraph 7 of the plaintiff’s complaint as it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the plaintiff to his burden of proof.

8. The defendant neither admits nor denies the allegations contained in paragraph 8 of the plaintiff’s complaint as it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the plaintiff to his burden of proof.

9. The defendant denies the allegations contained in paragraph 9 of the plaintiff’s complaint.

10. The defendant neither admits nor denies the allegations contained in paragraph 10 of the plaintiff’s complaint as it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the plaintiff to his burden of proof.

11. The defendant denies the allegations contained in paragraph 11 of the plaintiff’s complaint.

AS TO COUNT I - NEGLIGENCE

12. The defendant repeats and restates its answers to the allegations contained in paragraphs 1 through 11 of the plaintiff’s complaint and incorporates them herein by reference.

13. The defendant neither admits nor denies the allegations contained in paragraph 13 of the plaintiff’s complaint as it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the plaintiff to his burden of proof.

14. The defendant denies the allegations contained in paragraph 14 of the plaintiff's complaint.

15. The defendant denies the allegations contained in paragraph 15 of the plaintiff's complaint.

16. The defendant denies the allegations contained in paragraph 16 of the plaintiff's complaint.

AS TO COUNT II – FAILURE TO WARN

17. The defendant repeats and restates its answers to the allegations contained in paragraphs 1 through 16 of the plaintiff's complaint and incorporates them herein by reference.

18. The defendant denies the allegations contained in paragraph 18 of the plaintiff's complaint.

19. The defendant denies the allegations contained in paragraph 19 of the plaintiff's complaint.

20. The defendant denies the allegations contained in paragraph 20 of the plaintiff's complaint.

21. The defendant denies the allegations contained in paragraph 21 of the plaintiff's complaint.

AS TO PLAINTIFF'S PRAYERS FOR RELIEF

Southbridge denies that the plaintiff is entitled to any relief.

SECOND DEFENSE

The defendant states that the plaintiff's complaint is general in nature and provides almost no specific facts upon which it can assess the merits of the plaintiff's claims against it.

Accordingly, the defendant reserves the right to assert additional affirmative defenses which investigation and discovery may hereafter reveal to be appropriate.

THIRD DEFENSE

The defendant says that if it was negligent as alleged which it specifically denies, the negligence of the plaintiff was greater than the alleged negligence of the defendant and, therefore, the plaintiff cannot recover.

FOURTH DEFENSE

The defendant says that the injuries and damages alleged were caused, in whole or in part, by the plaintiff's own negligence.

FIFTH DEFENSE

The defendant says that the accident as alleged in the plaintiff's complaint was not caused by any person for whose conduct the defendant is legally responsible.

SIXTH DEFENSE

The defendant states that the plaintiff is not entitled to recover as the complaint does not set forth a claim upon which relief can be granted.

SEVENTH DEFENSE

In further answering, the defendant says that the plaintiff has intentionally overstated the amount of the loss and is, therefore, not entitled to recover.

EIGHTH DEFENSE

In further answering, the defendant says that the plaintiff's claim is frivolous and not made in good faith, and the defendant, therefore, demands its costs and attorney's fees pursuant to G.L. c. 231, § 6F.

NINTH DEFENSE

The defendant says that if plaintiff was injured as alleged, such was due to the acts or negligence of another, which constitute an intervening, superseding cause and, therefore, defendant is not liable.

TENTH DEFENSE

The defendant further states that the alleged acts and/or omissions of Southbridge were not the proximate cause of, or a contributing factor to, any damages or injuries allegedly suffered by the plaintiffs.

ELEVENTH DEFENSE

The defendant states that the plaintiffs remedy is under the Massachusetts Worker's Compensation statutes, and accordingly that recovery against Southbridge should be barred or offset.

TWELFTH DEFENSE

In further answering, the defendant states that the plaintiff has failed to mitigate his damages and is barred, in whole or in part, from recovering some or all of his alleged costs and damages.

THIRTEENTH DEFENSE

In further answering the defendant states that the plaintiff has failed to join all parties necessary for a just judication.

THE DEFENDANT HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

THE DEFENDANT, SOUTHBRIDGE
POWER & THERMAL, LLC

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-AND-

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CERTIFICATE OF SERVICE

I, Patrick J. Markey, Esq., hereby certify that on this 16th day of July, 2004, I served a copy of the above upon the parties in the action by mailing, postage prepaid, to counsel, Charlotte E. Glinka, Esq., Keches & Mallen, P.C., 122 Dean Street, Taunton, MA 02780.

Subscribed under the penalties of perjury.

/s/ Patrick J. Markey
Patrick J. Markey, Esq.